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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,566	01/18/2002	Rodney D. Borst	7359-6	1352

7590

09/27/2005

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EXAMINER

LEE, EDMUND H

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/051,566

Applicant(s)

BORST, RODNEY D.

Examiner

EDMUND H. LEE

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1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/31/05 has been entered.

2. Claims 28-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "the thermoformed container" (cl 28, step (g), ln 1; cl 39, last line of the claim) lacks antecedent basis in the claim.

Clarification and/or correction is required.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (USPN 3418690) in view of White (USPN 4495135). In regard to claim 28, Edwards teaches a method of vacuum thermoforming a container which an outer surface including an outwardly-projecting ridge, the container further including a base,

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side walls, and an inwardly-projecting cut lip (figs 1-11); providing a mold defining a cavity conforming in shape to the outer surface of the container, the cavity including an undercut portion corresponding to the ridge of the container, the molding including separable mold means 20 and plug 28, the mold means defining the undercut portion and further defining a surface corresponding to the side walls of the container, the plug defining a surface corresponding to the base of the container (figs 1-11); positioning a heated sheet of thermoplastic material over the mold (figs 1-11); drawing the heated sheet of thermoplastic material over the upper lip of the mold and down into the cavity and into the undercut portion of the mold (col 3, lns 19-21; figs 1-11); allowing the drawn thermoplastic material to cool below the glass transition temperature to assure that it will retain its shape (figs 1-11)--such is inherent in order to prevent damage to the molded article and Edwards teaches that the sheet of thermoplastic is chilled while in contact with the mold (col 5, lns 33-36); cutting the thermoplastic material along the upper lip of the mold to separate the drawn thermoplastic material in the mold cavity from the remainder of the thermoplastic material (figs 1-11); separating the mold means and the plug (figs 1-11); and removing the thermoformed container from the mold means and the plug (figs 1-11). However, Edwards does not teach using a three-part mold including a first portion having a planar upper surface, an upper lip and defining an upper part of the undercut portion, a second portion defining a lower part of the undercut portion, and the first and second portions of the mold being separable along a part line corresponding to the outermost extent of the ridge of the container. White teaches vacuum thermoforming a container having an undercut flange (figs 3-8); and

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using a mold including a first portion having a planar upper surface, an upper lip and defining an upper part of an undercut portion, a second portion defining a lower part of the undercut portion, and the first and second portions of the mold being separable along a part line corresponding to the outermost extent of the ridge of the container (figs 3-8). Edwards and White are combinable because they are analogous with respect to removing a vacuum thermoformed container having an undercut flange from a molding cavity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate separable first and second portions as taught by White into the mold of Edwards in order to facilitate removal of the container having the undercut flange and to reduce the risk of damaging the container having the undercut flange during removal. In regard to claim 29, the limitations are taught by Edwards (fig 11). In regard to claims 30-34, the limitations are taught by the above combination of Edwards and White. See figs 1A, 3D and 11 of Edwards. In regard to claim 35, such is a mere obvious matter of choice dependent on equipment design and of little patentable consequence to the claimed process since it is not a manipulative feature or step of the claimed process. Further, it is well-known in the molding art to remove a product from between mold portions. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to remove the container of Edwards from between the first and second portions of the mold of Edwards (modified) in order to reduce any damage to the container. In regard to claim 36, such is taught by the combination of Edwards and White. In regard to claim 37, such is a mere obvious matter of choice dependent on equipment design and of little patentable consequence

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to the claimed process since it is not a manipulative feature or step of the claimed process. Further, it is well-known in the molding art to separate mold portions by lowering one portion from the other portion. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to separate the first and second portions of the mold of Edwards (modified) in order to reduce any damage to the container. In regard to claim 38, such is taught by Edwards (fig 3c).

5. Claims 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (USPN 3418690) in view of White (USPN 4495135). In regard to claim 39, Edwards teaches a method of vacuum thermoforming a container which includes an outer surface including an outwardly-projecting ridge, a base, side walls, and an inwardly-projecting cut lip (figs 1-11); providing a mold defining a cavity conforming in shape to the outer surface of the container, the cavity including an undercut portion corresponding to the ridge of the container, the molding including separable mold means 20 and plug 28, the mold means defining the undercut portion and further defining a surface corresponding to the side walls of the container, the plug defining a surface corresponding to the base of the container (figs 1-11); positioning a heated sheet of thermoplastic material over the mold (figs 1-11); drawing the heated sheet of thermoplastic material over the mold and into the cavity and into the undercut portion of the mold (col 3, lns 19-21; figs 1-11); allowing the drawn thermoplastic material to cool below the glass transition temperature to assure that it will retain its shape (figs 1-11)-- such is inherent in order to prevent damage to the molded article and Edwards teaches that the sheet of thermoplastic is chilled while in contact with the mold (col 5, lns 33-36);

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cutting the cooled thermoplastic material along the upper lip of the mold to separate the drawn thermoplastic material in the mold cavity from the remainder of the thermoplastic material (figs 1-11); separating the mold means and the plug (figs 1-11); and removing the thermoformed container from the mold means and the plug (figs 1-11). However, Edwards does not teach using a three-part mold including a first portion having a planar upper surface, an upper lip and defining an upper part of the undercut portion, a second portion defining a lower part of the undercut portion, and the first and second portions of the mold being separable along a part line corresponding to the outermost extent of the ridge of the container. White teaches vacuum thermoforming a container having an undercut flange (figs 3-8); and using a mold including a first portion having a planar upper surface, an upper lip and defining an upper part of an undercut portion, a second portion defining a lower part of the undercut portion, and the first and second portions of the mold being separable along a part line corresponding to the outermost extent of the ridge of the container (figs 3-8). Edwards and White are combinable because they are analogous with respect to removing a vacuum thermoformed container having an undercut flange from a molding cavity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate separable first and second portions as taught by White into the mold of Edwards in order to facilitate removal of the container having the undercut flange and to reduce the risk of damaging the container having the undercut flange during removal. In regard to claim 40, such is a mere obvious matter of choice dependent on equipment design and of little patentable consequence to the claimed process since it is not a manipulative feature or step of the

claimed process. Further, it is well-known in the molding art to remove a product from between mold portions. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to remove the container of Edwards from below the first portion of the mold of Edwards (modified) in order to reduce any damage to the container. In regard to claim 41, such is taught by the combination of Edwards and White.

6. Applicant's arguments filed 5/31/05 have been fully considered but they are not persuasive. Applicant argues that the combination of Edwards and White would create an unwanted parting line on the bead. It is true that Edwards does not want a bead with a parting line but the combination of Edwards and White would not create a bead with a parting line. The parting line created by the combination of Edwards and White would be on rim portion 60 not bead 38a thus the combination of Edwards and White would not conflict with Edwards' purpose.

Applicant argues that the mold portion of White is not the same as Edwards' thus it would not be possible to incorporate the mold portion of White into the mold of Edwards. Even though the shapes of the undercut of Edwards and White are different, it would have been obvious to one of ordinary skill in the art at the time the invention was made to redesign the first portion of White to have the desired shape of Edwards in order for it to be used in the molding process of Edwards. Applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the



test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Here, the combination of Edwards and White teaches the use of a three-part mold during a vacuum thermoforming process.

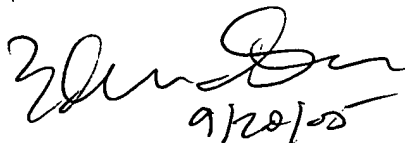
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDMUND H. LEE whose telephone number is 571.272.1204. The examiner can normally be reached on MONDAY-THURSDAY FROM 9AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on 571.272.1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EDMUND H. LEE  
Primary Examiner  
Art Unit 1732

EHL



9/20/05